

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of : Eberhard Harms) Confirmation No. 2263
et al.)
Serial No.: 10/539139) Group Art Unit: 1797
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Filed: August 18, 2005)
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Title: FILTER DEVICE)
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Atty. Dkt.: FRG-16153)
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Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF (37 CFR § 41.37)

Sir:

Applicant is submitting a Reply Brief. No payment is required. If any additional fees are due in combination with this filing, please charge such additional required fees to our Deposit Account No. 18-0160, Our Order No. FRG-16153.

This brief contains the items under the following headings in the order set forth below:

- I. STATUS OF CLAIMS
- II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- III. ARGUMENTS

I. STATUS OF CLAIMS

A. Total Number of Claims in Application

Eleven claims are currently pending in this application.

B. Status of the Claims

1. Claims previously canceled: Claims 2, 5, 6 and 14
2. Claims withdrawn from consideration but not cancelled: None
3. Claims pending: 1, 3-4, 7-13 and 15
4. Claims allowed: None
5. Claims rejected: 1, 3-4, 7-13 and 15
6. Claims objected to: 15
7. Claims indicated as allowable if the §112 rejections are overcome: None

C. Claims on Appeal

The claims on appeal are: Claims 1, 3-4, 7-13 and 15.

II. GROUNDS OF REJECTION

1. Whether claims 1, 3-4, 7-13, 15 are patentable under 35 U.S.C. §103(a) over Canadian Patent No. 2421115A1 to Grigo et al. in view of Japanese Patent 61274799 to Masuda et al and further in view of U.S. Patent No. 3,997,447 to Breton et al.

2. Whether claim 13 is patentable under 35 U.S.C. §103(a) over Canadian Patent No. 2421115A1 to Grigo et al. in view of Japanese Patent 61274799 to Masuda et al.

VII. ARGUMENTS

1. The Rejection of Claims 1, 3-4, 7-13, 15 under 35 U.S.C. §103(a) as being unpatentable over Canadian Patent No. 2421115A1 to Grigo et al. (hereinafter Grigo) in view of Japanese Patent 61274799 to Masuda et al (hereinafter Masuda) and further in view of U.S. Patent No. 3,997,447 to Breton et al. (hereinafter Breton)

Regarding the proposed combination of Grigo and Masuda, specifically the ability or inability to combine together the devices taught by each, Applicant's argument is supplemented by explanation in the context that the references teach away from the combination thereof.

First, Masuda states that aeration means are placed between filter plates, rather than under filter plates. Specifically, see the translation provided in Appendix 8A of the Examiner's answer, page 2, at the end of paragraph [1]. Masuda teaches away from placing aeration means below the plates (i.e. in the open space of Grigo). Masuda teaches that a significant force from the expelled gas is required to clean the filter plate, and therefore the gassing outlets must be arranged along the surface of the filter membranes such that the emitted gas directly hits the surface of the membrane of the filter plate (see page 9 of Masuda translation, middle paragraph).

Masuda teaches away from placing the aeration means in the open space of Grigo because according to Masuda the aeration means would not be considered close enough to the plates and the significant force needed to remove material would not be produced.

Grigo teaches away from such a combination, as already stated in the Appeal Brief, because placing aeration means between the filter plates of Grigo would render the Grigo device inoperable.

Regarding the reference to Breton, Applicant additionally notes that one of ordinary skill in the art of filter cleaning would not be familiar with the type of construction shown in Breton. The framework for determining obviousness under 35 U.S.C. 103 is stated in the case *Graham v. John Deere Co.* 383 U.S. 1 (1966). This case states that obviousness is a question of law based on underlying factual inquires including that of resolving the level of ordinary skill in the pertinent art.

The pertinent art of Applicant's claims and those that depend therefrom are filter devices that minimize adhesion of solid substances to filter elements therein by means of aeration. Breton however is cited art from an area of filtration where compressed air is not used for cleaning. Rather, Breton only shows use of a filter type device for introducing gas into a fluid for activating biological processes (i.e. sparging), which is clearly not the same. Applicant concludes that such use in Breton is not well known *per se* in the art concerning cleaning of filter plates by aeration.

Thus, for these reasons, in addition to those already stated in the Appeal Brief, applicant respectfully submits that the Examiner's rejection of claims 1, 3-4, 7-13, 15 under 35 U.S.C. §103(a) was improper, and should be reversed.

2. The Rejection of Claim 13 under 35 U.S.C. §103(a) as being unpatentable over Canadian Patent No. 2421115A1 to Grigo et al. (hereinafter Grigo) in view of Japanese Patent 61274799 to Masuda et al (hereinafter Masuda)

Regarding the proposed combination of Grigo and Masuda, specifically the ability or inability to combine together the devices taught by each, Applicant's argument is supplemented by explanation in the context that the references teach away from the combination thereof.

First, Masuda states that aeration means are placed between filter plates, rather than under filter plates. Specifically, see the translation provided in Appendix 8A of the Examiner's answer, page 2, at the end of paragraph [1]. Masuda teaches away from placing aeration means below the plates (i.e. in the open space of Grigo). Masuda teaches that a significant force from the expelled gas is required to clean the filter plate, and therefore the gassing outlets must be arranged along the surface of the filter membranes such that the emitted gas directly hits the surface of the membrane of the filter plate (see page 9 of Masuda translation, middle paragraph).

Masuda teaches away from placing the aeration means in the open space of Grigo because according to Masuda the aeration means would not be considered close enough to the plates and the significant force needed to remove material would not be produced.

Grigo teaches away from such a combination, as already stated in the Appeal Brief, because placing aeration means between the filter plates of Grigo would render the Grigo device inoperable.

Thus, for these reasons, in addition to those already stated in the Appeal Brief, applicant respectfully submits that the Examiner's rejection of claim 13 under 35 U.S.C. §103(a) was improper, and should be reversed.

Conclusion

In view of the foregoing, it is respectfully submitted that claims 1, 3-4, 7-13 and 15 are allowable over the prior art references of record, and a ruling from the Board to that effect is therefore respectfully requested.

Respectfully submitted,

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